

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
December 3, 2007**

Members Present:

Michael Villyard
Michael Gallagher
Ed Hardemon
Helen Dutmer
George Alejos
Paul Klein
Mary Rogers
Andrew Ozuna
Maria D. Cruz
Mimi Moffat

Staff:

Rod Sanchez, AICP, Director
Fernando De Leon, P. E., Asst. Dir.
Ted Murphree, Asst. City Attorney
Christopher Looney, Planning Manager
Rudy Nino, Jr., Sr. Planner
David Arciniega, Planner
Michael Farber, Planner

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Villyard, Chairman, called the meeting to order and called roll of the applicants for each case.

CASE NO. A-08-011

Applicant – Mark and Marie Cooper
Lot 16, Block 22, NCB 1944
1940 W Summit Avenue
Zoned: “R-6” Residential Single-Family District

The applicant is requesting a **1)** a 130 square-foot variance from the requirement that accessory detached dwelling units be no larger than 800 square feet, in order to build a 930 square-foot accessory detached dwelling unit, and **2)** a 23% building footprint variance from the requirement that the building footprint of an accessory detached dwelling unit be no larger than 40% of the principal building footprint, in order to build an accessory detached dwelling unit with a building footprint that would be 63% of the building footprint of the principal residence.

David Arciniega, Planner, presented background and staff’s recommendation of denial on this case. He indicated 26 notices were mailed, 9 notices were returned in favor and 0 notices were returned in opposition and no response from the Jefferson/Woodlawn Lake Neighborhood Association

Mark Cooper, applicant, stated he is requesting this variance to accommodate a manual and electric wheelchair accessibility.

Marie Cooper, applicant, stated the reason she is requesting this variance is to have her mother live in the accessory dwelling because her mother will need a caregiver to stay with her and assist her. She also stated having her mother and her caregiver living in the home with her and her husband would be too tight. She further stated she does not want to use dwelling as a rental home.

The following citizen(s) appeared to speak:

Carlos Flores, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-011 closed.

MOTION

A motion was made by **Mr. Ozuna** regarding Appeal No. **A-08-011**, variance application for **1940 West Summit Avenue**, Subject Property Description **Lot 16, Block 22, NCB 1944**, again located at **1940 West Summit Avenue**, the applicant again is **Mark & Marie Cooper**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-08-011**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **the current land use zoning of "R-6" is to remain. There are no other variances that are requested by the applicant other than the 130 square foot variance.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has shown today that the additional square footage would provide wheelchair access for her mother who will be staying with them and two it preserves a large tree that if they needed to expand their existing residence that there is possibility that the tree would have to be cut down in the backyard.** So that the spirit of the ordinance is observed and substantial justice is done in that **granting the variance allows for the care of her elderly mother and potential caretaker.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that **again the "R-6" zoning is to remain and there is no changes of the land use plans proposed.** Such variance will not substantially or permanently injure the district in which the variance is sought in that **there is no opposition to the requested variance in fact we have nine in favor of and the response from the neighborhood association was favorable with a letter read into the record to prove such.** Such variance will not alter the essential character of the district in which the variance is sought in that **accessory buildings are found through out the neighborhood. The request is merely a square foot variance to be able to build what is proposed by the applicant.** Such variance will be in harmony with the spirit and purpose of this chapter in that **again no land use changes are proposed.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, and are not due to or the result of the general conditions in the district in

which the property is located in that **the applicant's options are to build around a large tree which is not really possible or to make the existing structure smaller which would effect render in useless for the applicant's desire to have her mother and her wheelchair use the property.** The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **again the "R-6" zoning is the current use which is to remain through out and no changes to the land uses are proposed.** The motion seconded by Mr. Hardemon.

AYES: Ozuna, Hardemon, Cruz, Rogers, Moffat, Dutmer Klein, Alejos, Camargo, Gallagher, Villyard.

NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-08-013

Applicant – William B. Patterson
Lot 26, Block 3, NCB 16935
6711 Country Swan
Zoned: "R-6" Residential Single-Family District

The applicant is requesting a 1) a 6-inch variance from the Unified Development Code requirement that a minimum 5-foot side setback be maintained for accessory structures, in order to keep an accessory structure 4 feet, 6 inches from the side property line, and 2) a 3-foot variance from the Unified Development requirement that a minimum 5-foot rear setback be maintained for accessory structures, in order to keep the same accessory structure 2 feet from the rear property line.

David Arciniega, Planner, presented background and staff's recommendation of denial of this variance. He indicated that there were 56 notices mailed, 3 notices were returned in favor and 2 notices were returned in opposition and no response from Alamo Farmsteads – Babcock Road Neighborhood Association.

William B. Patterson, applicant, stated he is requesting this variance is to use the structure as storage for the contents of his garage and electric tools. He is also stated the architect he hired informed him he did not a permit because he was not going to have electricity or water in the building. He further stated he spoke to the neighbor behind him and assured him he would a rain gutter on the building so the rain would not run into his property.

The following citizen(s) appeared to speak:

Jose Rivera, citizen, spoke in opposition.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-013 closed.

MOTION

A motion was made by **Mr. Camargo**. I would like to move that in Case **A-08-013**, the request of **William B. Patterson**, for a variance on property known as **Lot 26, Block 3, NCB 16935**, also known as **6711 Country Swann**, be granted the following: **one that a 6-inch variance from the Unified Development Code in that a minimum 5-foot side setback be maintained for accessory structures, in order to keep an accessory structure 4 feet, 6 inches from the side property line, and secondly this is where it differs from what is written that a 1-foot variance from the Unified Development Code requirement that a 3-foot rear yard setback be maintained for accessory structures without a setback in order to keep the same accessory structure 2-feet from the rear property line be maintained for structures without an overhang.** I would feel that such variance will not be contrary to the public interest in that the property owner that would be most effective has indicated to the board that they would not impose such a variance if in fact the structure was modified in accordance with the variance that was previously stated. Due to special conditions, literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant relied in good faith upon a designer's recommendation and has proceeded to the point that concrete structures have been placed underneath this structure and would somewhat difficult to make that modification.** So that the spirit of the ordinance is observed and substantial justice is done in that **the variance that is being recommended is a modification of that which currently exists and while the owner will still have to make modifications it does offer relief for him to be able to maintain this accessory building in its present location.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that **the structure is proposed to be used as an accessory use which is a permitted use in this zoning classification.** The variance will not substantially or permanently injure the district in which the variance is sought in that **the variance that is being recommended is a very minor modification or deviation rather from that of the Unified Development Code.** Such variance will not alter the essential character of the district in which the variance is sought in that **accessory structures of this nature are permitted within the Unified Development Code.** Such variance will be in harmony with the spirit and purpose of this chapter in that **the variance that is recommended is not a large or major deviation from the minimum requirement that are currently stated in the code.** The plight of the property owner for which the variance is sought is due to unique circumstances existing on the property and not personal in nature or self-created, and are not merely financial, as stated earlier the applicant relied on an individual that prepared for him drawings of this structure and assurances that permits were not required and the owner proceeded in good faith with an individual whom he had hired to provide this service. The variance will not substantially weaken the general purposes of this chapter of the regulations herein established for the specified district in that **variance that is being granted in this request is a very minor deviation from current regulations.** The variance will not adversely affect the public health, safety or welfare of the public in that **permits will be taken by the applicant and proper inspections and other codes that are applicable to this building will be adhere to.** The motion seconded by **Ms. Dutmer**.

AYES: Camargo, Dutmer, Ozuna, Rogers, Alejos, Villyard
NAY: Cruz, Moffat, Klein, Gallagher, Hardemon

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-08-014

Applicant – Nora V. Garza
Lot 11, Block 3, NCB 2324
2817 Buena Vista Street
Zoned: “MF-33” Multi-Family District

The applicant is requesting a Special Exception to continue to operate a one operator beauty shop in a residential area.

David Arciniega, Planner, presented background and staff’s recommendation of approval. He indicated that 24 notices were mailed, 3 notices were returned in favor and 0 notices were returned in opposition and no response from Prospect Hill Neighborhood Association.

Nora V. Garza, applicant, stated she is requesting this Special Exception to continue her beauty salon. She further stated she has spoken to several neighbors and they like the salon.

The following citizen(s) appeared to speak:

Alicia Ortiz, citizen, spoke in opposition

Maria Hernandez, citizen, spoke in opposition.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-014 closed.

MOTION

A motion was made by **Mr. Gallagher** Re. Appeal Case No. **A-08-014**, Special Exception the applicant being **Nora Garza**, the lot being **Lot 11, Block 3, NCB 2324**, the address being **2817 Buena Vista Street**. I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-08-014** application for a Special Exception for the subject property described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UDC 35-399.01. Specifically, we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **we have a record of approvals by this Board in the past in support of this particular Special Exception**. The public welfare and convenience will be substantially served in that **a service is being provided to the neighborhood**. The neighboring property will not be substantially injured by such proposed use in that **there is no change in the hours of operation nor the size or location of the business**. The special exception will not alter the essential character of the district and location in which

the property for which the special exception is sought in that **this beauty salon is hidden around back and not something of prominence in the neighborhood.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **we will be voting on this one property and this property only.** The hours of operation **will remain as they have been in the past Monday, Tuesday, Thursday thru Saturday, from 9am to 6pm for a total of 45 hours per week.** The beauty shop will remain closed on Wednesday and Sunday and there are no proposed changes to that. The period for which this Special Exception is to be granted is four years. The motion seconded by Mr. Hardemon.

AYES: Gallagher, Hardemon, Cruz, Alejos, Moffat, Klein, Ozuna, Rogers, Dutmer, Camargo, Villyard

NAY: None

THE VARIANCE WAS GRANTED.

Board Members took a 15 minute recess.

CASE NO. A-08-015

Applicant – Carlos L. Flores
Lot 18, 19, and 20, Block 335, NCB 9428
435 West Hutchins Place
Zoned: "R-6" Residential Single-Family District

The applicant is requesting a 3-foot variance from the requirement that solid screen fences in front yards be no taller than 3 feet, in order to keep an existing 6-foot tall solid screen fence in the front yard.

David Arciniega, Planner, presented background and staff recommends denial. He indicated that 24 notices were mailed, 1 notice was returned in favor and 1 notice was returned in opposition.

Carlos Flores, applicant, stated he is requesting this variance for three different reasons. He further stated he wants to keep people out, to keep his grandchildren from running into the street, and he also has his son's equipment behind the fence. He doesn't want anybody stealing the equipment.

No citizens to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-08-015 closed.

MOTION

A motion was made by **Mr. Cruz**. In reference to Appeal No. **A-08-015**, variance application for **435 West Hutchins**, property description **Lots 18, 19, and 20, Block 335, NCB 9428**, located at **435 West Hutchins Place**, applicant is **Mr. Carlos L. Flores**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-08-015** application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically we find that such variance will not be contrary to the public interest in that **no fence or wall other than the wall of the permitted structure shall be erected or altered in any front yard to exceed a height of four feet with a fence or wall to be so constructed that vision would not be above the height of 3 feet. In conclusion of a 3 foot variance from the requirement that solid screen fences in front yards be no taller than 3 feet, in order to keep an existing 6-foot tall solid screen fence in the front yard.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **it safeguards the items behind the fence.** So that the spirit of the ordinance is observed and substantial justice is done. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located in that **area such as "R-6" Residential Single-Family District.** End of variance. The motion was seconded by **Mrs. Rogers**.

AYES: Cruz, Rogers, Hardemon, Klein, Alejos, Ozuna, Camargo, Gallagher, Villyard

NAY: Moffat

THE VARIANCE WAS GRANTED.


Board Member **Mr. Gene Camargo** requested Case **A-08-010** be reconsidered. **Mr. George Alejos** was recused from this case because he was concerned that his vote would be a conflict of interest. **Mr. Alejos** was later informed that his vote would not be a violation of any ethics regulations. **Mr. Villyard** made a motion to allow staff to further review this case with legal to determine whether this case could be reopened for reconsideration.

AYES: Alejos, Dutmer, Hardemon, Cruz, Gallagher, Klein, Camargo, Rogers, Ozuna, Villyard

NAY: Moffat

THE MOTION WAS GRANTED.**Approval of the Minutes**

Mr. Camargo moved to approve the minutes of November 19, 2007 as changed and was seconded by **Ms. Cruz** and all members voted in the affirmative.

APPROVED BY:  OR
D. Mike Villyard, Chairman Michael Gallagher, Vice-Chair

ATTESTED BY: Christopher J. Looney DATE: 12-17-07
Christopher J. Looney
Development Services, Planning Manager